

E-299,132/C-89-519DISMISSING COMPLAINT

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of a Complaint by the City of Rochester, Minnesota, Against People's Cooperative Power Association, Inc., Regarding Its Extension of Electric Distribution Facilities in Annexed Areas of the City of Rochester While Proceedings Are Pending by the City to Purchase the Facilities and Property of People's Contained Therein

ISSUE DATE: August 31, 1989

DOCKET NO. E-299,132/C-89-519

ORDER DISMISSING COMPLAINT

PROCEDURAL HISTORY

Between May 30 and June 14, 1989, the City of Rochester (Rochester or the City) filed petitions with the Minnesota Public Utilities Commission (the Commission) seeking authorization to provide interim service to certain newly annexed areas (including the areas involved in this matter) within the City, pending the Commission's determination of compensation in Docket No. E-299,132/SA-88-996. On July 17, 1989, the City filed this complaint.

The City alleged that People's Cooperative Power Association, Inc. (People's) extended electric distribution facilities to serve Cimarron Ninth, Hunter Hills, Lincolnshire Second, and River Court Third Subdivisions before the Commission had decided the City's interim service requests. The City further alleged that these service extensions violate Minn. Stat. §§ 216B.41 and 216B.44 (1988) and have resulted in duplicate distribution facilities being installed, in derogation of the public interest.

Rochester also asserted that People's intends to extend electric distribution facilities in East Northern Heights Fifth, Willow Hills Third, and Parkwood Hills Fifth Subdivisions.

Rochester asked that the Commission order People's to cease and desist serving Cimarron Ninth, Hunter Hills, Lincolnshire Second, and River Court Third Subdivisions and remove all facilities unlawfully installed in these subdivision. Rochester further requested that People's be forbidden to extend facilities into East Northern Heights Fifth, Willow Hills Third, and Parkwood Hills Fifth Subdivisions pending the final outcome of the Commission's deliberations regarding the City's request to provide interim service in these areas. Finally, the City asked that the Commission find that People's service extensions in Cimarron Ninth, Hunter Hills, Lincolnshire Second and River Court Third Subdivisions violate the law and refer the matter of the Office of the Attorney General for appropriate legal action.

On July 28, 1989 People's filed an Answer to the City's Complaint, asking that the Commission dismiss the City's Complaint in its entirety. People's did not deny extending service or preparing to extend service to the areas named in the City's Complaint but argued that it was authorized to extend service to these areas pursuant to Minn. Stat. §§ 216B.04, 216B.37, and 216B.44 (1988).

On July 27, 1989, the Minnesota Department of Public Service (DPS or the Department) filed its recommendation that the Commission dismiss the City's Complaint.

The Commission met on August 1, 1989 to consider this matter.

FINDINGS AND CONCLUSIONS

The Commission must decide whether People's' extension of service to areas within its assigned service territory prior to Commission decisions on the City's petitions for authority to provide interim service to those areas during the pendency of compensation proceedings violates Minnesota law or Commission Orders.

The Commission is guided by Minn. Stat. §§ 216B.40, 216B.44 and 216B.04 (1988) and prior Commission Orders.

Minn. Stat. § 216B.44 (1988) provides that when a municipality which owns and operates a public utility extends its boundaries through annexation or consolidation, or extends its service territory within its existing boundaries, the municipality shall thereafter provide electric service to these areas unless the area is already receiving service from an electric utility. If so, the municipality may purchase the facilities of the electric utility serving the area.

The statute sets guidelines for the purchase and sale of the facilities. If the municipality and the utility cannot agree on a purchase price, the statute provides that either can petition the Commission to determine the appropriate terms for the sale. The statute provides that after notice and hearing the Commission can determine the terms of the sale. The law lists factors for

the Commission to consider in making its determination. Minn. Stat. § 216B.44 (1988) then states:

Until the determination by the commission, the facilities shall remain in place and service to the public shall be maintained by the owner. However, the electric utility being displaced, serving the annexed area, shall not extend service to any additional point of delivery within the annexed area if the commission, after notice and hearing, with due consideration of any unnecessary duplication of facilities, shall determine that the extension is not in the public interest.

Here, the electric utility being displaced is People's. It serves the annexed areas. In cases involving these same parties the Commission has found that within its assigned service territory a utility is providing electric service within the meaning of the statute if it has facilities in place which are capable of serving the area, whether or not there are customers physically present. The Commission reaffirms those findings. To find otherwise would create artificial distinctions. If an actual customer is required for a utility to be providing service, it could be argued that, perhaps, service is being provided to the lots touching that customer's lot, but not across the street, two lots away, three lots away, etc. This is unnecessarily complicated and is a tortured interpretation of the statute. People's has facilities in place which are capable of serving the named subdivisions and, therefore is serving the areas within the meaning of the statute.

The statute further provides that the displaced utility, here People's, is authorized to extend service to the annexed area unless, after notice and hearing, the Commission determines that it is not in the public interest for it to do so. The Commission has made no such determination. The Commission concludes that People's actions are consistent with Minn. Stat. § 216B.44 (1988) and prior Commission Orders.

In addition, Minnesota law requires every public utility to provide safe, adequate, efficient, and reasonable service

within its exclusive service territory. Minn. Stat. §§ 216B.04 and 216B.40 (1988). Service to the public must be maintained during interim authority proceedings and compensation proceedings. Prudence and sound public policy demand that a utility anticipate load growth within its service area and plan for the capacity to meet that growth. Here that planning for future allows customers to receive electric service virtually upon request because facilities are in place. The public interest is not served by narrowly construing the law to require an actual customer for a utility to be providing service within its assigned service area.

The Commission concludes that prior to the payment of compensation and without a Commission determination that extension of service by People's was not in the public interest, People's violated no statutes or Commission Orders when it extended service to the named subdivisions which are within its exclusive service territory and to which it provided electric service within the meaning of Minn. Stat. § 216B.44. The Commission will dismiss the City's complaint.

ORDER

1. The Complaint by the City of Rochester filed July 17, 1989 in this matter is hereby dismissed.

2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)